

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HUNTAIR, INC.)	
)	
)	
Plaintiff,)	Case No. 07 C 6890
)	
vs.)	Hon. Judge David H. Coar
)	
CLIMATECRAFT, INC.)	Magistrate Judge Morton Denlow
)	
Defendant.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that the attached Amended Page 8 to Huntair, Inc.'s Responsive Claim Construction Brief includes an inadvertently omitted footnote and replaces page 8 from Huntair, Inc.'s Responsive Claim Construction Brief (Doc. 71), filed by ECF on July 21, 2008.

Dated: July 22, 2008

Respectfully submitted,

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specification does not disclose a particular structure for the "control system" and "array controller," those of skill would understand the terms broadly to encompass manual and/or automatic control systems and controllers for air handling systems. (See Karvelis Aff. ¶ 14 at 3; Karvelis Response Aff. ¶ 11 at 2); *Apex*, 325 F.3d at 1373.^{4a} The context in which these "array controller" and "control system" terms appear in the claims provides further clarification as to the types of disclosed structures. (See, e.g., Pl. Ex. B, '775 patent, claim 1, step (d) ("an array controller for controlling said at least six fan units to run at substantially peak efficiency by strategically turning selective ones of said at least six fan units on and off")); *Personalized Media*, 161 F.3d at 704. ClimateCraft cannot overcome its heavy burden of imposing means-plus-function limitations that contravene the claim terms' plain meaning. See *CCS Fitness*, 288 F.3d at 1369.

C. THE INVENTOR DID NOT DISCLAIM MANUAL CONTROL DURING THE PROSECUTION OF THE '775 PATENT

ClimateCraft argues that the inventor specifically disclaimed coverage for the manual operation of the fan array by virtue of statements made with respect to United States Patent No. 4,767,262 to Simon ("Simon patent") during prosecution of the '775 patent. Manual control of the fan units is implicated by the "control system" claim elements that appear in the claims of the '046 patent. The inventor did not disclaim anything with respect to the Simon patent and is not estopped from claiming coverage for manual control.

First, in order to act as a disclaimer, the language used by the inventor must amount to a *clear and unambiguous disavowal of any right* to the disputed claim scope. *Middleton, Inc. v. 3M*, 311 F.3d 1384, 1388 (Fed. Cir. 2002). The inventor here simply and correctly observed that there was no teaching in the Simon patent to control the fans to achieve peak efficiency. That statement is true today, as it was when it was made. There is no teaching or suggestion in Simon (or any other reference for that matter) to use any type of system to selectively disable fans to run the remaining fans at nearly peak efficiency.

The inventor disclosed the Simon patent to the examiner *in the specification of the asserted patents*. (Def. Ex. 36 at CL 39, Application of 3/22/04 at p.5 ll.13-15; see '046 patent col.3 ll.35-37.) The Simon patent discloses the use of multiple fans for cooling electronic equipment, such as a laptop computer. Although the patent was directed to a non-analogous

^{4a} Furthermore, even if ClimateCraft were correct, the patent specification does disclose structure associated with these terms, as it provides an example of a variable frequency drive. ('046 patent col.6 ll.31-33.)

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2008, I caused a copy of the foregoing document, NOTICE OF FILING, to be served by ECF upon:

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